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109TH CONGRESS }
1st Session

SENATE

{ REPORT
109-210

TRUTH IN BROADCASTING ACT OF 2005

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 967



DECEMBER 20, 2005.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

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DECEMBER 20, 2005.—Ordered to be printed

Mr. STEVENS, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 967]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 967) to amend the Communications Act of 1934 to ensure that prepackaged news stories contain announcements that inform viewers that the information within was provided by the United States Government, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 967 is to amend the Communications Act of 1934 to ensure that Federal Government-produced prepackaged news stories contain announcements that inform viewers that the information within was provided by the United States Government. The bill will require Federal agencies to provide, within the text or audio of any prepackaged news story prepared or produced by that Federal agency and intended for broadcast or video distribution in the United States, clear notice that such story was produced by the Federal Government. In turn, broadcasters, cable and satellite companies would be allowed to remove or modify such notices only in circumstances to be determined by the Federal Communications Commission. However, broadcasters, cable and satellite companies that only utilize government “B-roll” or segments of a video news

release within their own creative work product are not subject to the disclosure requirements of this bill. The disclosure requirements are limited to the broadcast or video distribution of complete, ready-to-use audio or video news segments produced by the government. The bill, as amended, provides that nothing in the legislation shall be construed to apply to any lawful and authorized intelligence activity of the United States Government.

BACKGROUND AND NEEDS

Prepackaged news stories are ready-to-use, complete audio or video news segments designed to fit seamlessly into a private broadcast. They are essentially the radio or television equivalent of a government press release. Video prepackaged news stories, known as video news releases (VNRs), have been used for decades by both Democratic and Republican administrations to communicate with the public. Since 1951, language in yearly appropriations laws has required that Federal agencies not conceal the government origin of VNRs. Specifically, appropriations laws have prohibited the use of Federal funds for covert “publicity or propaganda” unless otherwise authorized by Congress. The provisions included in appropriations laws are temporary, year-long prohibitions that expire when the appropriations laws expire.

On May 11, 2005, President Bush signed the Emergency Supplemental Appropriations Act For Defense, The Global War On Terror, And Tsunami Relief, 2005, P.L. 109–13 (Defense Supplemental). A provision in that law required Federal agencies to disclose the government origin of prepackaged news stories. Specifically, section 6002 of the Defense Supplemental provided that, unless otherwise authorized, none of the appropriated funds may be used by an executive branch agency to produce any prepackaged news story intended for broadcast or distribution in the United States unless the story includes a clear notification within the text or audio of the prepackaged news story that the prepackaged news story was prepared or funded by that executive branch agency.

On May 12, 2005, the Commerce Committee held a hearing on prepackaged news stories. In that hearing, witnesses representing the broadcast and news distribution industry expressed concern that S. 967 as originally introduced might be unnecessary in light of long-standing, self-imposed ethical guidelines concerning the attribution of third-party sources. Moreover, the Federal Communications Commission clarified, in a Public Notice released in April 2005, that disclosure of third party sources was already required under its rules in certain circumstances.

The Defense Supplemental expired on September 30, 2005. That same day, the Government Accountability Office released a report criticizing the administration for its use of VNRs without clearly notifying the public of their government origins. Specifically, the GAO found that since prepackaged news stories are purposefully designed to be indistinguishable from news segments broadcast to the public, their broadcast without attribution to the government makes them no longer purely factual.

During consideration of S. 967 in Committee, Senator Stevens offered a substitute amendment that would impose a disclosure duty on Federal agencies preparing or funding prepackaged news stories. The substitute amendment is closer to the prohibition in sec-

tion 6002 of the Defense Supplemental than the provisions of S. 967. The substitute requires government agencies to provide notice within prepackaged news stories (including VNRs) intended for broadcast or video distribution within the United States. It also directs the FCC to determine under what circumstances broadcasters, cable and satellite television companies should be allowed to remove or modify the notices placed in prepackaged news stories by or on behalf of the Federal agency preparing or funding them. Senator Lautenberg's second degree amendment would provide that the new provisions shall not apply to any lawful and authorized intelligence activity of the United States Government.

SUMMARY OF PROVISIONS

S. 967, the Prepackaged News Story Announcement Act, amends the Communications Act to require prepackaged news stories produced or funded by, or on behalf of, the Federal Government to contain a clear disclosure of such stories' government origins. The bill, as amended, further provides that the circumstances under which such disclosure may be removed are to be determined by the Federal Communications Commission. As explained in the definitions section, the legislation applies only to a prepackaged news story, not to other individual segments contained in a video news release. The bill further provides that nothing in the legislation shall be construed to apply to any lawful and authorized intelligence activity of the United States Government.

Section 1 contains the short title of the bill, the "Prepackaged News Story Announcement Act of 2005."

Section 2 amends the Communications Act of 1934, by inserting a new Section 342, "Announcement of United States Government Sponsorship of a Prepackaged News Story."

The new subsection 342(a) requires prepackaged news stories produced by or on behalf of a Federal agency and intended for broadcast over the air, or distribution by a "multichannel video programming distributor," within the United States to clearly notify the audience that the story was prepared or funded by the Federal Government. The notice required by subsection 342(a) must be contained within the text or audio of the story broadcast or distributed.

The new subsection 342(b) tasks the Federal Communications Commission with promulgating rules governing the circumstances under which broadcasters or multichannel video programming distributors may remove or modify the notification required by subsection 342(a).

The new subsection 342(c) defines the term "prepackaged news story" as a complete, ready-to-use audio or video news segment designed to be indistinguishable from a news segment produced by an independent news organization. It also defines "multichannel video programming distributor" to have the meaning given that term by section 602(13) of the Communications Act of 1934, a meaning that encompasses cable television and satellite television providers.

The new subsection 342(d) exempts from the new law any lawful and authorized intelligence activity of the United States Government.

LEGISLATIVE HISTORY

The “Truth in Broadcasting Act of 2005” (S. 967) was introduced by Senator Lautenberg on April 28, 2005 and referred to the Senate Committee on Commerce, Science, and Transportation. There are nine cosponsors of S. 967, including six original cosponsors. The original six cosponsors are Senators Kerry, Clinton, Kennedy, Dorgan, Boxer, and Dayton. The other cosponsors are Senators Akaka, Feingold, and Corzine. On October 20, 2005, the Committee considered the bill in an open Executive Session. Senator Stevens offered a manager’s amendment in the nature of a substitute, and Mr. Lautenberg offered an amendment to Senator Stevens’ substitute. Mr. Lautenberg’s amendment clarified that the requirements of S. 967 would not apply to lawful and authorized intelligence activities of the United States Government. The Committee, without objection, adopted both amendments and ordered that S. 967, with the new short title “Prepackaged News Story Announcement Act of 2005,” be reported with the amendments.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

NOVEMBER 2, 2005.

Hon. TED STEVENS,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 967, the Prepackaged News Story Announcement Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure.

S. 967—Prepackaged News Story Announcement of Act of 2005

CBO estimates that enacting S. 967 would have no significant impact on the federal budget. Enacting the bill would not affect direct spending or revenues. S. 967 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

S. 967 would amend the Communications Act of 1934 to prohibit federal agencies from producing prepackaged news stories without disclaimers that identify the government as the source. A prepackaged news story is a complete, ready-to-use news item designed to be indistinguishable from a news story produced by an independent author or news organization. In addition, the legislation would require the Federal Communications Commission to promulgate rules governing when the government disclaimers can be modified or removed.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The Federal Communications Commission may issue regulations to implement the requirement set forth in the reported bill that announcements be included in broadcasts and video distributions by parties subject to the Commission's jurisdiction. The reported bill also requires the Federal Communications Commission to determine the circumstances in which the announcements required by the legislation may be removed or modified. The Commission would be required to develop regulations to implement these requirements, so individuals or businesses that broadcast radio or television programs, or distribute video programming, that is subject to the legislation would become subject to new or modified regulations.

ECONOMIC IMPACT

S. 967 would not have an adverse economic impact on the nation's economy. The Act would require that prepackaged news stories contain announcements that inform audiences that the information within was prepared or funded by the United States Government.

PRIVACY

The reported bill would have no impact on the personal privacy of U.S. citizens.

PAPERWORK

The reported bill should not significantly increase paperwork requirements for individuals and businesses.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 would establish the short title of the bill as the "Prepackaged News Story Announcement Act of 2005."

Section 2. Prepackaged news story announcements

This section would amend the Communications Act of 1934 by adding a new section 342 to the end of Title III.

A new section 342(a) would require Federal agencies to include a disclosure within any government prepackaged news story that is intended for broadcast or video distribution within the United States, by a broadcaster, or cable or satellite company, that such prepackaged news story was prepared or funded by the United States Government.

A new section 342(b) would require the Federal Communications Commission to promulgate rules on the circumstances under which the announcement required under the new Section 342(a) may be removed or modified.

A new section 342(c) would set forth the definitions used in the bill. This subsection defines “prepackaged news story” as a complete, ready-to-use audio or video news segment designed to be indistinguishable from a news segment produced by an independent news organization. It also defines “multichannel video programming distributor” as having the meaning set forth in Section 602(13) of the Communications Act of 1934 (47 U.S.C. 522(13)).

A new section 342(d) would provide that nothing in S. 967 shall be construed to apply to prepackaged news broadcast or distributed outside the United States with respect to activities to which Title V of the National Security Act of 1947 relate.

ADDITIONAL VIEWS OF SENATOR LAUTENBERG AND SENATOR KERRY

This legislation makes it clear that the Federal Government has the legal obligation to identify itself as the source of prepackaged news stories it has funded or prepared. This law is necessary to resolve a disagreement between the Government Accountability Office (GAO) and the Administration on disclosure requirements when the Federal Government funds or prepares prepackaged news stories.

On May 19, 2004, GAO ruled that Medicare prepackaged news stories produced and distributed by the Department of Health and Human Services (HHS) were illegal covert propaganda because they did not identify HHS as the source of the news story. On January 4, 2005, GAO ruled that unattributed prepackaged news stories produced and distributed by the Office of National Drug Control Policy (ONDCP) were illegal covert propaganda. In both cases, GAO found that the misuse of appropriate funds were also a violation of the Antideficiency Act (31 U.S.C. 1341), which prohibits expenditures that exceed budget authority, because no appropriations are available for illegal covert propaganda.

In each case, GAO distinguished a video news release (VNR) from a prepackaged news story (which is often just one segment of a VNR). A full VNR may include a prepackaged news story, video clips or “B-roll,” and “slates” or “slides” with information on the agency or the program in question, as well as other promotional materials. GAO took issue specifically with the prepackaged news stories within the larger VNR.

On February 17, 2005, GAO sent a memo to all Federal agencies instructing them to identify themselves in all prepackaged news stories. Then, on March 11, 2005, the Office of Management and Budget (OMB) and the Department of Justice (DOJ) sent a memo to all Federal agencies telling them to ignore the directives in the GAO memo, claiming that agencies do not need to identify the Government as the source of prepackaged news stories.

On May 11, 2005, a provision in the Emergency Supplemental Appropriations Act for Defense, The Global War on Terror, And Tsunami Relief, 2005, P.L. 109–13 (Defense Supplemental) imposed a requirement that a prepackaged news story prepared or funded by a Federal agency include a clear notification that the agency was the source of the story.

The Defense Supplemental expired on September 30, 2005. That same day, the Government Accountability Office (GAO) released a report finding that Department of Education prepackaged news stories promoting the Administration’s “No Child Left Behind” program were illegal covert propaganda. This was the third such ruling by the GAO against the use of Government funds for “covert propaganda” since May 2004. As with the previous two violations,

GAO also found this misuse of appropriated funds to be a violation of the Antideficiency Act. However, as was the case with the other two GAO legal decisions, the Administration rejected the legal findings.

It is in this context that legislation is necessary to permanently require a clear notification within a prepackaged news story produced by or on behalf of a Federal agency that the story was prepared or funded by the United States Government.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 47, UNITED STATE CODE**Subtitle III. Special Provisions Relating to Radio****Part I. General Provisions****SEC. ANNOUNCEMENT OF UNITED STATES GOVERNMENT SPONSORSHIP OF A PREPACKAGED NEWS STORY.**

(a) *DISCLAIMER REQUIRED.*—Any prepackaged news story produced by or on behalf of a Federal agency and intended for broadcast over the air or distribution by a multichannel video programming distributor within the United States shall contain a clear notification within the text or audio of the prepackaged news story that the prepackaged news story was prepared or funded by the United States Government.

(b) *REMOVAL OF DISCLAIMER.*—The Commission shall promulgate rules governing the circumstances under which broadcasters or multichannel video programming distributors may remove or modify the announcement required under subsection (a).

(c) *DEFINITIONS.*—In this section:

(1) *PREPACKAGED NEWS STORY.*—The term “prepackaged news story” means a complete, ready-to-use audio or video news segment designed to be indistinguishable from a news segment produced by an independent news organization.

(2) *MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR.*—The term “multichannel video programming distributor” has the meaning given that term by section 602(13).

(d) *INTELLIGENCE ACTIVITIES.*—Nothing in this section shall be construed to apply to any lawful and authorized intelligence activity of the United States Government.